I.K. IBRAHIM IDRUS

v.

LEE YU MEI

HIGH COURT MALAYA, SEREMBAN
ABDUL RAZAK J
[CIVIL APPEAL NO. 9 OF 1980]
7 JULY 1981

LAND LAW: *Temporary Occupation Licence - National Land Code - Agreement between previous holder now dead - Notice to quit by deceased's wife - Validity - Locus standi - Whether TOL in force.*

The appellant appealed against the decision of the learned Magistrate who ordered the appellant to give up his vacant possession of premises No. 21, Simpang Pertang, Jelebu to the respondent and to pay double rent at RM80 per month from the date of filing the action until delivery of vacant possession.

The land under dispute was held under a TOL. The previous holder was the husband of the respondent who died in 1966. The agreement to occupy the land for a period of twelve years, to expire in March 1976, was entered into during the deceased's life time between him and the appellant. The respondent became the registered licensee in 1968. She gave notice in August 1975 to the appellant to vacate the premises, the notice to take effect before 6 March 1976, when the contract was due to expire.

The appellant refused to vacate and pleaded that the respondent had no *locus standi* as she was not a party to the agreement.

In the alternative the appellant said that the land had reverted to the State Government on the deceased's death; in the further alternative he was protected by the Control of Rent Act 1966.

In his appeal the appellant raised one ground which arose at the trial itself that the Magistrate could not have made the order she did because at the time of the order the TOL had already expired and that there was no basis for the order.

It was not disputed that there was no TOL in favour of the respondent at the time the order was made. The TOL had been tendered as an exhibit. The Assistant District Officer had given evidence that the TOL would be renewed and would be back dated. It would expire at the end of 1979, with two weeks more still to go at the date of trial.

Held:

[1] The matter regarding *locus standi* did not arise because the respondent was already a registered licensee in her own right at the time the notice to vacate was issued by her. The TOL had been renewed in favour of the respondent in 1968.

[2] As far as the order to enforce the judgment was concerned the appeal Court must proceed on the equitable principle that equity looks on that as done which ought to be done and will not suffer a wrong to be without remedy. The respondent must not be deprived of a judgment merely because of the action of others. Therefore, the TOL must be deemed to be in force at the time when the order was made.

[3] The learned Magistrate was right in making the order except that since the respondent claimed for an order for double rent from the date of the order, it was ordered accordingly.

[Appeal dismissed with costs.]

For the appellant - A.K.J. D'Cruz; A.K.J. D'Cruz & Co.
For the respondent - Nirmala Devi Selvarajah; Sri Selvarajah & Nirmala

JUDGMENT

Abdul Razak J:

This is an appeal against the decision of the learned Magistrate wherein she made an order that the appellant gave up his vacant possession of premises No. 21 Simpang Pertang, Jelebu to the respondent together with an order to pay double rent at RM80 per month from the date of filing the action that is April 1976 until delivery of vacant possession.

The land the subject matter of the dispute was held under a temporary occupation licence. The respondent had been the registered licensee since 1968. There was no dispute regarding this. The previous holder was her husband who died in 1966. During the deceased's lifetime he had entered into an agreement with the appellant to occupy the land for a period of twelve years to expire in March 1976. The occupation continued during and after the respondent became the registered licensee in 1968. In August 1975 however, the respondent sent a notice to the appellant to vacate the premises to take effect before 6 March 1976 when the contract was due to expire but the appellant had refused. The appellant in his defence said that the respondent had no *locus standi* because the agreement was not made with her but with her husband. In the alternative he said the land had reverted to the State Government on the deceased's death; in the further alternative he said he was protected by the Control of Rent Act 1966. At the time of the appeal apparently none of these matters pleaded were strenuously relied upon by the appellant. I think he had good reasons for doing so. It was obvious that as far as the *locus standi* was concerned, the matter did not arise because whether there was an agreement or not the respondent was already a registered licensee in her own right at the time the notice to vacate was issued by her. As Counsel had rightly put it she was yet to be the legal representative of her husband's estate; she was therefore not bound by the agreement. On the question of whether the land had reverted to the State the latter could hardly have done so because they had clothed her with the necessary authority to sit on it by renewing the TOL in 1968. In regard to the Control of Rent Act 1966 Counsel rightly conceded that it did not apply to the appellant. It seems therefore that without those grounds in the pleadings there was clearly no basis on which the appeal could have proceeded. The appellant however raised one ground in his appeal which arose at the trial itself. The Magistrate he said could not have made the order which she did because at the time when she made it the TOL had already expired. There was no basis therefore on which she could make the order. This was not disputed but it also had transpired that the TOL had been tendered as an exhibit. It was also in evidence that the Assistant District Officer at the relevant District Office had in giving evidence assured the Court that the TOL would be renewed by the Land Office and backdated since this would be a matter of course. He said the TOL would expire at the end of 1979. The record showed that the relevant date of trial was 14 December 1979. It showed that when he gave the assurance the life of the licence had still two weeks or more to expire. As far as the lower Court was concerned it seemed to have acted correctly in stating that since it was asked to determine whether the respondent's notice to vacate had effect that for the purpose of making her judgment that only the date of the notice was relevant. However

as far as the order to enforce her judgment was concerned, I think it is only fair to say that the Appeal Court must proceed on the equitable principle that equity looks on that as done which ought to be done and will not suffer a wrong to be without a remedy. The respondent in this case could have applied to the Land Office to renew the TOL or she could have asked to caveat the land but she had not apparently done so clearly it seems to me for one of two reasons, either because the TOL was held by the Court as an exhibit or because of the assurance given by the Assistant District Officer that it would be renewed and back-dated. In either case it seems to me to be quite unfair and unjust that the respondent should now be deprived of the fruits of her judgment merely because of the action of others for which she would not be held responsible or at least where she was entitled to issue would be acted in her favour. Under the circumstances I hold the TOL must be deemed to be in force at the time when the order was made. In the result the learned Magistrate was right in making the order which she did except that since the respondent had only asked for an order for double rent from the date of the order, it will be so ordered; save otherwise I would therefore dismiss the appeal with costs.

The parties would however be at liberty to apply to this Court for any consequential relief arising from the decision of this appeal.

Also found at [1981] CLJ 89